

Building Democracies with Southern Command's Legal Engagement Strategy

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## **BUILDING DEMOCRACIES WITH SOUTHERN COMMAND'S LEGAL ENGAGEMENT STRATEGY**

America has conducted itself in the post-Cold War era with the understanding that fostering democracies and encouraging military establishments subject to the rule of law are vital to US national security interests.[ 1] In this regard, the warfighting unified commands mirror the overall US national security policy of peacetime engagement not only by maintaining close contacts with allies and friendly governments for the purpose of imparting values and ideals associated with democratic principles, but by focusing this commitment through detailed engagement plans.

For example, in a document entitled "Strategy of Cooperative Regional Peacetime Engagement," General Charles E. Wilhelm, Commander in Chief of US Southern Command from 1997 to 2000 (now retired), set out his vision for Latin America and the Caribbean as "a community of democratic, stable, and prosperous nations ... served by professional, modernized, interoperable security forces that embrace democratic principles, demonstrate respect for human rights, are subordinate to civil authority, and are capable and supportive of multilateral responses to challenges." [ 2]

In addition, recognizing that there is a legal dimension to almost every aspect of the US Southern Command engagement plan, the Office of the Staff Judge Advocate developed and published a first-ever legal engagement strategy in [1998.3] The intent of the legal engagement strategy is to promote the concept of professional law-based militaries that operate in accordance with the rule of law, respect internationally recognized human rights[,4] and are subordinate to and controlled by democratically elected civilian governments, in short, the US Southern Command legal engagement strategy is a blueprint for democracy-building in the context of the rule of law. In the quest for war avoidance, this legal engagement plan is a unique force multiplier and contributes to the "shaping" dimension of the National Military Strategy.

### **The Importance of the Rule of Law in War Avoidance**

In his groundbreaking book about warfare in the 21st century, *Race to the Swift*, Richard Simpkin argues that democracies must find "politico-legal devices" to confront the enemies that threaten today's societies, and that the armed forces of a democracy must carry out their duties in conformity with the rule of law. Simpkin states, "Democratic governments rest on the rule of law, and must so rest[.5]

The term "rule of law" was initially coined to refer to the common law system of jurisprudence with particular emphasis on equality before the courts. The more modern common meaning, however, encompasses those rules and legal standards of behavior recognized and practiced between states in the context of the community of nations, and connotes consistency in the application of democratically passed and impartially implemented and enforced national laws and regulations. In the words of University of Virginia law professor John Norton Moore, the importance of the rule of law is central to international relations: "Law ... is vitally important. Even in the short run, the [rule of] law serves as a standard of appraisal for national actions and as a means of communicating intentions to both friend and foe, and perceptions about lawfulness can profoundly influence both national and international support for particular actions." [ [6](#) ]

In tandem with Professor Moore's admonishment, the Clinton Administration's Secretary of State, Madeleine Albright, said that of all the problems facing the Southern Hemisphere, none is more important than improving adherence to the rule of law. "Where justice is absent," Albright writes, "peace and stability of a nation and its neighbors come under threat; where justice is partial, citizens who do not have access to equal treatment lose faith in their government, and the forces of extremism grow strong; and where justice is unprofessional, crime flourishes, corruption grows, and economies suffer." [ [7](#) ] If it is obvious that justice cannot be achieved without adherence to the rule of law by all levels of society, it is particularly true that a nation's military and security forces must also embrace the rule of law.

Promoting the rule of law is not merely an end worthy unto itself; in the quest for war avoidance and promoting the full range of human rights, there are great benefits to both the United States and the world at large. In fact, recognizing a nexus between the nation that mistreats its own citizens and the nation that fosters aggression against its neighbors, both the preamble and Article 1 of the UN Charter leave no doubt that justice, human rights, and the fundamental freedoms of all mankind are at risk, and aggressive war an almost inevitable outcome, when democratic principles and the rule of law are ignored. [ [8](#) ]

In other words, the fostering of democracies makes the world more secure because, in the words of former national security advisor Anthony Lake, "Democracies tend not to wage war on each other and they tend not to support terrorism--in fact, they don't." [ [9](#) ] Indeed, it seems intuitively obvious that activities pursued by democracies are substantially better than the activities pursued by totalitarian or authoritarian regimes, which characteristically exhibit a blatant disregard for the rule of law.

So, as many commentators have noted, the new paradigm for war avoidance turns out to be a very straightforward model: If democracies make better neighbors, it is certainly in the best interests of the United States to do all it can to foster all emerging democracies and to thereby enlarge respect for the rule of law in international relations. If democracies are better neighbors, the United States must expend the necessary time, effort, and capital to effectively assist those nations that have exhibited the political will to embark on democracy's path. And nowhere has the desire for democracy and the rejection of repression been more evident than in the amazing, and still ongoing, transformation of governments in Latin America.

### **The Military in the Emerging Democracies of Latin America**

Latin America's desire for democracy is seen in the remarkable transformation that has taken place in the context of how people are governed. Just over ten years ago some 90 percent of Latin American countries functioned under some form of undemocratic military rule. Today, all but one of these countries operate under popularly elected civilian governments. The Western Hemisphere is now virtually all democratic, Cuba being the most obvious exception. Nevertheless, as one would expect, a number of Latin American countries are experiencing serious troubles in establishing or maintaining the institutions necessary for the full blessings of democracy.

While assistance to the democracies in Latin America is needed at every possible level, of utmost concern in the evolutionary transition from totalitarianism to democracy is defining the appropriate role of the military forces there. In Latin America, the militaries of the new democracies are often a decisive factor in who governs. Unfortunately, the chief legacy of the undemocratic past is that those militaries have a limited frame of reference for operating under principles associated with the rule of law. On the contrary, coming out of a tradition in which the ruling elite of the totalitarian state maintained power by using special units of the armed forces as a primary instrument of repression against the people, in many cases the military itself was viewed as the chief abuser of human rights.[ [10](#)]

Simply put, the totalitarian regimes relied on components of the military establishment to maintain power and to suppress any threat--internal or external--by any means. Human rights, the rule of law, and civilian control were alien concepts. Thus, if the new democracies are to stabilize and flourish, subordinating the military to civilian control befitting a democratic system in which the soldier can carry out his mission in accordance with the principles of human rights is absolutely essential. In short, a hallmark of a successful democracy is the military's full acceptance of the fundamental principles of the rule of law.

A law-based military is a key component of successful democratic reform. In a democracy, the military cannot be an independent actor; it must take directions from the government and be accountable to society for the way it carries out those directions. The central question, then, is how best to help instill solid rule-of-law values in the armed forces. Since rule-of-law values become solid and irreversible only through the development of institutions designed to promote them, institutionalization must be the criterion. Teaching a few classes to a military audience on US democratic traditions, for instance, is not a solution. Rule-of-law values must be institutionalized through a systematic approach that provides the necessary inculcation. Remarkably, the leaders of military and security forces throughout the Latin American region have embraced--or at least recognized and accepted--the need for civilian control of the government, including the military, and in many cases, their efforts to promote military reform have served as the catalyst for institutional changes in the nation's civilian political institutions.

### **Legal Engagement Model**

Promoting the rule of law in the new democracies involves questions and issues which, because of their disparate nature, cannot be assigned to the jurisdiction of any single agency or department of the US government. Still, because of the nature of the problem--promoting the full range of rule-of-law issues to host-nation militaries--the matter is best spearheaded by the US military's uniformed lawyers, its judge advocates.[ 11] Judge advocates serve as an action-based resource capable of advising and responding to a variety of legal problems. Traditionally, judge advocates are tasked to provide support to the US military in the context of military justice, military administration, legal assistance, contracts, procurement, international law, and law-of-war issues. In general, the principal function of any judge advocate is to provide advice on legal matters to the commander and his staff to ensure that all activities are carried out in accordance with US domestic and international law.

The very existence of a uniformed legal corps serves as a way to institutionalize the American commitment to the positive values of military proficiency and ethical integrity in the armed forces. In addition, by doctrine, lawyers oversee all of the regulatory requirements associated with providing training in the laws of war[ 12] and code of conduct to all US soldiers.[ 13] As a result, few militaries in history can match the record of the US military as it has functioned under the rule of law, whether in the realm of respecting the law of armed conflict, providing a fair system of justice for its soldiers, or operating under civilian control.[ 14]

The Southern Command's lawyers faced a novel and formidable challenge in crafting an effective legal strategy to support the unified commander's engagement efforts while taking into account US operational and security

concerns, cultural diversity, mistrust of US intentions, resentment of US power and influence, unfamiliarity with different legal systems that were oftentimes dysfunctional and corrupt, and a natural resistance to change. Nevertheless, after recognizing the key role a proactive rule-of-law program would play in supporting Southern Command's theater engagement efforts, the Staff Judge Advocate's Office conceived and crafted a coherent legal engagement strategy to help build rule-of-law programs, effect necessary reforms within the military justice systems of those countries interested in reform, and support military reformers within the national ministries of defense in their efforts to professionalize and legitimize their military and security forces. This legal engagement strategy focuses on working cooperatively with nations in the region, other government agencies, and international organizations[ [15](#)] in order to reinforce the importance of military institutions embracing the rule of law by adhering to domestic laws and international legal standards of behavior.

The cornerstone of Southern Command's legal engagement strategy is an annual symposium called the "Legal Symposium on Defense and Security Issues," held annually in Miami, Florida. The symposium is an intensive four-day conference that brings together the senior military leaders and their legal advisors from throughout the region. The purpose of the symposium is to fully explore the relationship that exists between commanders and their military legal advisors in a democracy. Because effective legal reform requires the full support of the senior leaders of the host nation, the symposium places special emphasis on demonstrating to the senior foreign line officers the necessity of a law-based professional military legal corps, and the importance of the rule of law in meeting regional threats and challenges. This is accomplished through detailed lectures, panel discussions, and working sessions devoted to real-world issues. Throughout these exchanges, concrete examples are provided on how military legal advisors can act as force multipliers over the full range of operational issues.

As a by-product of the annual symposium, a number of defense ministries have requested US assistance in defining how the law should properly function in their military establishments and, further, how the military itself should fit into a more democratic form of government that is serious about promoting human rights. The Staff Judge Advocate's Office serves as a forward-based resource capable of advising and responding to the variety of problems, sometimes enormous, confronting many of the emerging and struggling democracies. This support ranges from supplying basic information on how the US military adheres to the rule of law, drafting codes of military justice, reforming antiquated military justice systems, and assisting the foreign militaries in creating and training their own professional legal corps.

Obviously, in a constrained resource environment, all the requests cannot be pursued simultaneously. Therefore, consistent with the priorities established by US Southern Command's Strategic Engagement Plan, the legal office focuses on those areas and countries that have the highest priority for support. Priority is determined by a number of factors, including the importance of the country to US national security interests, a demonstrated willingness to effect reforms within the military, and support from the civilian leadership. Furthermore, a primary concern in the assessment process centers on how effectively, over the long-term, a nation's military leadership can be encouraged to accept a reduced and more professional role appropriate to a democracy and remain loyal to a democratically elected civilian government.

A successful strategy to achieve this long-term goal must be based on two overall themes directed toward the host military and appropriate government officials: ( [1](#) ) foster greater respect for, and understanding of, the principle of civilian control of the military; and ( [2](#) ) improve military justice systems and procedures to comport with internationally recognized standards of human rights.[ [16](#)]

Two examples of US Southern Command's ongoing legal engagement efforts are representative--one in Colombia and the other in Venezuela.

### **Colombian Human Rights Training**

Recognizing that the militaries in many of the emerging and struggling democracies have a slim frame of reference for properly handling human rights issues, a major focus of the legal engagement strategy is to promote, strengthen, and assist the host nation's armed forces in institutionalizing human rights training. A representative and highly successful example of how the legal engagement plan operates is seen in a recently completed two-year project to fully institutionalize human rights training in the Colombian military. This long-term assistance effort stands as a model for other rule-of-law initiatives in other regions.

One of the major obstacles in imparting concepts relating to human rights and democratic principles is that many of the democracies in Latin America are typically faced with the social and economic turmoil traditionally associated with low-intensity-conflict environments, ranging from economic chaos to actual armed insurgency. Thus, the effectiveness of any program of assistance must be measured against the realities associated with the specific problems facing the host nation.

Nowhere in the world do the multiple forces of insurgency, terrorism, and drug-trafficking threaten social order more than in Colombia. Foremost in the Colombian fight for survival is maintaining the legitimacy of the military as it



conducts operations against a number of insurgency groups, foremost of which is the Revolutionary Armed Forces of Colombia (FARC). A major step in solidifying the legitimacy issue is to inculcate human rights and law-of-armed-conflict training into the government's armed forces.

In October 1998, the then-Deputy Commander in Chief, US Southern Command, Major General Alfred Valenzuela, directed the legal office to assist the Colombian military in institutionalizing human rights and law-of-war training in the nation's entire armed forces. General Valenzuela personally secured the support of the Colombian Ministry of Defense to this end and was absolutely instrumental in subsequently obtaining the necessary funding from the Secretary of the Army's Latin American Cooperation Fund.[ [17](#)]

While the Colombians expressed a desire to receive human rights instruction, there was little, if any, standardized methodology to teach human rights to its soldiers. There existed no military legal facility designed and equipped to train Colombian commanders in these specialized legal areas. Clearly, Colombian soldiers in the field had to be given adequate and meaningful human rights training if they were to be held accountable and if they were expected to be better prepared to cope with the abuses of terrorists. Furthermore, this training had to be institutionalized into the fabric of the Colombian military system so that human rights training would be a continuous requirement for all soldiers. Cultural, language, and social barriers suggested the best chance for success would be for Colombian instructors to deliver the actual subject-matter presentations.

Ultimately, the legal office, working in conjunction with Southern Command's Human Rights Division,[ [18](#)] the International Committee of the Red Cross, and Colombian human rights experts, developed and then executed a concept plan that produced a human rights and law-of-war handbook to be used as the standard training guide for the entire Colombian military. Over 500,000 copies of the handbook were printed in Colombia, and a cadre of Colombian officers was trained in two train-the-trainer courses on how to "teach the handbook." The end state of this project is to have Colombian instructors train every soldier and to institutionalize the handbook's contents as mandatory training for all future soldiers.

The apparent success of this effort in Colombia must be tempered by the fact that human rights training can be effective only to the degree that it is inculcated into the psyche of the military. At a minimum, the Colombians now have a standardized human rights training handbook that is truly their own. It is now up to the Colombians to continue the effort. In this regard, the strategy to keep the US role as that of a helper and not as an overseer has paid tremendous dividends. If the Colombian military is successful in coming years, the success



will be due to their continuing commitment to teach human rights and the law of war. Teaching and training, of course, must go hand-in-hand with investigating abuses and holding the guilty accountable. As a by-product of this initial effort and continued engagement with the Colombian senior military leadership, US Southern Command is currently providing assistance in creating a new Colombian military legal corps as well as instituting additional military justice reforms. While much work remains to be done, one cannot help but be cautiously optimistic that we have planted the seeds of a professional military organization, free from corruption and accountable to its citizens.

### **Venezuelan Military Justice Reform**

In Venezuela the focus was different. After the 1998 symposium, Venezuelan military officials requested Southern Command's assistance in creating, as mandated by new legislation, a completely new court-martial system with oral advocacy as its centerpiece. Traditionally, criminal and civil justice systems in Latin America have not used adversarial courtroom proceedings to render judgments. Appointed judges act as prosecutor, defense attorney, judge, and jury. Written testimonials are gathered, other documentary evidence is submitted by the parties concerned, and the judge, with no imperative for expeditious processing, eventually renders a decision. As a result, defendants often languished for years in jail awaiting trial unless they could bribe their way out. The decisionmaking process was usually secretive, and judges were never held accountable for their judgments. Indeed, there was no way of determining how judges arrived at their verdicts, and the system was obviously prone to corrupting and illegitimate influences.

The Venezuelan justice system was typical of this endemic problem. Consequently, the Venezuelan legislature passed a law requiring both civilian and military courts to change to a system similar to the adversarial process used in the United States. At a loss as to how to proceed, the Venezuelan Ministry of Defense requested Southern Command's assistance. After several meetings and visits to observe US trial procedures, a plan of action and milestones were developed and approved by both sides.

Over a period of approximately ten months, US judge advocates, working closely with their Venezuelan counterparts, drafted a new manual for courts-martial, set up training programs for Venezuelan military lawyers, conceived and drafted procedures for the conduct of trials, and arranged for visits to Puerto Rico to observe adversarial trials as they were conducted in the Spanish language. As a result of these intensive efforts, on 1 July 1999 the Venezuelan military inaugurated the first-ever adversarial trial system in all of South America. Since then, Southern Command has continued to make available various training programs. For instance, Southern Command provided funding for a team of experts from the Armed Forces Institute of Pathology to provide training on the

use of scientific test results and their introduction into evidence. Additionally, US judge advocates have been provided as trial observers to offer follow-on advice and assistance in the development of trial advocacy skills. Interestingly, the civilian court counterpart to the military justice system, which was supposed to have also converted to the adversarial system, has not yet, at this writing, implemented the legislatively mandated reforms. However, civilian court officials have started sending prosecutors and other attorneys to the military lawyer training courses and are using the newly instituted military justice system and procedures as the model for their reform efforts.

Southern Command subsequently has received a number of requests to support comparable changes in military justice systems throughout the region. Similar efforts are currently under way in Honduras and Guatemala, and plans are being developed to support requests from Ecuador, the Dominican Republic, and Bolivia.

### **Lessons Learned**

The Colombian and Venezuelan initiatives serve as a blueprint for the Southern Command's legal engagement plan. From these two cases, eight general points are worthy of consideration.

- First, as demonstrated throughout the Colombian initiative, any program to promote human rights values within foreign militaries must be built upon institutionalizing those values into the fabric of that force. Obviously, this goal can be achieved only through a systematic program designed to institutionalize these concepts. In the past, the United States has not recognized the importance of institutional reform. Instead, US programs relied on a variety of disjointed military security assistance initiatives to try to instill human rights values compatible with democratic principles in individual foreign soldiers. Since US efforts were geared only at exposing the individual foreign soldier to human rights ideals, institutional reform within the host-nation military never occurred. Essentially, the promotion of human rights and democracy was an indirect, hoped-for benefit at best rather than an explicit goal. Programs designed merely to have US personnel teach human rights or the law of armed conflict on one or more occasions will have only limited long-term results and will fail to instill pride and responsibility into the host military, which comes from designing and delivering their own human rights curricula for training.

This "train-the-trainers" approach is distinguishable from any other program in that it assimilates the target country's military command structure at all stages of the process in the development of a course to train its own soldiers in human rights law. This approach promises success because the target military is more likely to follow through with programs if its top military commanders have invested the time and resources needed to develop them. There is a direct

positive correlation between the host nation viewing the program as an indigenous effort and the amount of real support that is provided. The concept of training the trainer places the cost and the reward where it belongs, with the host country.

- Second, formal requests for these types of long-term assistance must always originate from the recipient government. Again, this is the purpose of the annual legal symposium. In this way, the matter of assistance is never framed as to what the United States is going to do, but what the two nations can do together. In this manner, the host nation is engaged in the reform effort at the beginning of the process. In Colombia, the idea of developing some type of effective human rights training had been percolating for several years. In Venezuela, the military leadership looks to the United States and Southern Command as the best place to support its mandated legal reform efforts. Furthermore, since the US representatives in-country best know the local politics and personalities, their complete support is essential. The lesson to apply in future efforts is fundamental: only a unified US team working together with its host-nation counterparts toward a common long-term objective will be able to launch and sustain a successful program.
- Third, closely related to developing solid requests for assistance from the host nation is the task of getting a firm commitment for the end result, real programmatic change. Since the task of institutional reform may require a total restructuring of the current system, including the elimination of programs that are counterproductive, the complete cooperation of the senior leadership of the host nation is absolutely essential. This commitment must be obtained as soon after the US site survey assessment as possible.
- Fourth, once the host nation has agreed to the concept of long-term reform, it is important that the US working team not get too far out ahead. Sensitivity is critical. Planners must take into account nationalistic and other characteristics peculiar to each military in developing a reform curriculum, whether in regard to military justice reform or human rights and law-of-war training.
- Fifth, one idea that needs further exploration is the concept of increased regional military cooperation in rule-of-law reform initiatives. In the project on human rights and law-of-war training, for example, the Staff Judge Advocate's Office and the Human Rights Division of US Southern Command are now working in Venezuela using the Colombian handbook as a model. Further, at a subsequent conference in Caracas on military justice reform attended by 15 countries, Southern Command proposed the creation of an areawide, centrally located, JAG school. This school would teach military and operational law to Spanish-speaking military lawyers and would serve as the professional legal development school for the

region. While few countries have the resources to run their own schools, they could instead contribute funds and other resources (for example, instructors and supplies) to such a cooperative school, and the United States could provide additional support and training to this one central program for legal education. Ultimately, the proposed school also could provide legal training to commanders and staff officers to sensitize them to the legal issues associated with military operations.

- Sixth, as in all relations with foreign nations, one needs to be particularly sensitive to concerns from the opposite end of the domestic political spectrum in the host nation. In this vein, the possibility exists that an opposition group might seize on any US-assisted program as the opening wedge to advance its own anti-US agenda. Efforts to make the list of political participants and "organizers" as broad as possible are helpful in defusing this potential problem. In Colombia, the US team brought into the process as many civilian human rights groups as it could.
- Seventh, a distinctive characteristic of a long-term program is the need to stay engaged. Indeed, quality control requires that the US military continue to monitor a program once it has been instituted. In this context, measurable standards for positive advancement need to be developed. This can be done by counting the number of soldiers trained and by closely following the reports of human rights violations. It is essential that contacts be maintained to allow the institutionalization to grow from the roots. Planners for future efforts must understand that such initiatives are not isolated events; tracking the program is just as critical as establishing the program. Measures of effectiveness must be developed and constantly analyzed to ensure that progress, however defined, is continually being made in protecting human rights, ensuring a procedurally fair and efficient military justice system, promoting the professional development of military lawyers, and--this is critical--cultivating an understanding and appreciation on the part of commanders and military leaders, civilian and uniformed, of the importance of seeking legal advice before initiating military operations.
- Finally, as we have seen with the Colombian initiative, it is crucial to institutionalize and advocate the need for legal input in all phases of military operations and training. In this regard, the legal office arranged to have various Department of Defense and Chairman of the Joint Chiefs instructions and directives mandating legal reviews of all operation and concept plans translated into Spanish and distributed at a recent legal symposium. Further, the Staff Judge Advocate has personally provided copies to senior civilian and military leaders in Colombia, Ecuador, Chile, and Nicaragua, recommending that they be used as models for instituting mandatory legal reviews to ensure compliance with domestic and international law. Experience has demonstrated that it is only through top-down, mandated change that the natural resistance to such efforts will eventually be overcome. Ultimately, without the full and willing

participation of the military leadership, these changes will have shallow roots and be doomed to wither and fail.

## **Conclusion**

In addressing the issue of promoting the rule of law in the militaries of Latin America, the empirical studies that have conclusively demonstrated the murderous behavior of totalitarian governments stand as a great motivator for reform. As former University of Hawaii Professor R. J. Rummel stated: "The way to end war and virtually eliminate 'democide' appears to be through restricting and checking power. This means to foster democratic freedom." [ [19](#)]

Through its legal engagement strategy, US Southern Command offers an innovative but realistic program that can make a difference by providing the lasting benefits of institutional democratic reform. By any standard of evaluation, the two initiatives discussed here stand as valuable models for offering meaningful help. For simplicity, focus, and potential for positive change, the legal engagement strategy has no equal--it targets institutional change and strives to ensure that the military forces of these new democracies are stake-holders and equal partners, if not leaders, in building and sustaining democratic reforms.

If the United States is serious about promoting peace and human rights, it is time to abandon mere showcase approaches to supporting the rule of law. Rather, as Southern Command continues to demonstrate under the new Commander in Chief, General Peter Pace, it is time for the United States to seek great things, to roll up its sleeves and help enlarge the number of true democracies in the world community. The blueprint for success exists. One need look no further than Southern Command's legal engagement strategy and the Strategy of Cooperative Regional Peacetime Engagement it supports.

## **REFERENCES**

[1.](#) See William J. Clinton, *"A National Security Strategy for a New Century"* (Washington: The White House, 1998).

[2.](#) *United States Southern Command's Strategy of Cooperative Regional Peacetime Engagement*, 1999, p. 1.

[3.](#) *Southern Command Staff Judge Advocate Strategic Legal Engagement Plan*, memorandum dated 2 October 1998, on file in Office of the Staff Judge Advocate, US Southern Command.

[4.](#) *Although in its most comprehensive meaning human rights encompasses all those principles and concerns associated with ensuring respect for the inherent dignity of the individual human being, many scholars view human rights as chronologically evolving in "generations." The first generation of human rights*

*deals essentially with the individual's fundamental right to be secure in the most sacred asset of all, his person. Only this category of human rights law is binding on all nations. Specifically, a state violates international human rights law if, as a matter of state policy, it practices, encourages, or condones seven types of actions that have gained universal recognition through treaty and custom. Set out at Restatement (Third) of the Foreign Relations Law of the United States (1987) section 702, Customary International Law of Human Rights, those actions are: (1) genocide; (2) slavery or slave trade; (3) the murder or causing the disappearance of individuals; (4) torture or other cruel, inhuman, or degrading treatment or punishment; (5) prolonged arbitrary detention; (6) systematic racial discrimination; and (7) a consistent pattern of gross violations of human rights.*

5. Richard E. Simpkin, *Race to the Swift: Thoughts on Twenty-First Century Warfare* (London: Brassey's, 1985), p. 320. *Emphasis added.*

6. John Norton Moore, *Law and the Grenada Mission* (Charlottesville, Va.: Center for Law and National Security, Univ. of Virginia School of Law, 1984), p. 1.

7. Madeleine Albright, speech at the 28th General Assembly of the Organization of American States, Caracas, Venezuela, 2 June 1998.

8. See Frank C. Newman and David Weissbrodt, *International Human Rights* (Cincinnati: Anderson Publishing, 1990).

9. Address by Anthony Lake, Special Assistant to the President for National Security Affairs, School of Advanced International Studies, Washington, D.C., 21 October 1993.

10. *Ibid.*

11. See Thomas J. Feeny and Margaret L. Murphy, "The Judge Advocate General's Corps, 1982-1987," *Military Law Review*, 122 (1988), 4. *The Marines do not have a judge advocate corps, and their lawyers are considered line officers who serve as lawyers. Members of the service legal community are often referred to as JAGs.*

12. See Jeffrey F. Addicott, "Operational Law Note: Proceedings of the First Center for Law and Military Operations Symposium," *Army Lawyer*, December 1990, p. 47.

13. See, for example, H. Wayne Elliott, "Theory and Practice: Some Suggestions for the Law of War Trainer," *Army Lawyer*, July 1983, p. 1; James A. Burger, "International Law--The Role of the Legal Advisor and Law of War Instruction,"

*Army Lawyer, September 1978, p. 22; and William H. Parks, "The Law of War Advisor," JAG Journal, 31 (1980), 1.*

[14.](#) *But see Fredrick A. Graf, "Knowing the Law," Proceedings, June 1988, p. 58. If the record of the US military is measured against the actual rules, and not against its adversaries, it has "been far from perfect."*

[15.](#) *This is a function of "operational law." See David E. Graham, "Operational Law (OPLAW)--A Concept Comes of Age," The Army Lawyer, July 1987, p. 9; and "Operational Law Note: Proceedings of the First Center for Law and Military Operations Symposium," The Army Lawyer, December 1990, p. 47. To better support evolving missions associated with operational deployments, the Judge Advocate General's Corps developed a new legal discipline in the late 1980s. In accordance with the working definition of operational law--"that body of law, both domestic and international, impacting specifically upon legal issues associated with the planning for and deployment of US forces overseas in both peacetime and combat environments"--judge advocates are concerned with legal issues associated with law of war, security assistance, intelligence law, status of forces agreements, contracting, claims, combined training exercises, humanitarian assistance, civil affairs, peace operations, drug interdiction, training of foreign military legal officers, and other related matters.*

[16.](#) *See The Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2347, which provides the authority for security assistance under the International Military Education and Training (IMET) program. These two goals are taken from Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, Public Law 101-513; 104 Stat. 1997.*

[17.](#) *10 USC section 1050.*

[18.](#) *Interestingly, of all the geographic unified commands, only Southern Command has so far seen the need to create a human rights office to proactively engage military counterparts on human rights issues.*

[19.](#) *R. J. Rummel, "Power Kills; Absolute Power Kills Absolutely," Haiku Institute of Peace Research, Hawaii, 20 October 1991, p. 17.*

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